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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

APR 22 1991

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Petitions for Declaratory Ruling)	MMB File No. 910221A
Regarding Reversionary and)	MMB File No. 870921A
Security Interests)	

To: Chief, Mass Media Bureau

COMMENTS OF BURR, EGAN, DELEAGE & CO.

Burr, Egan, Deleage & Co. ("Burr, Egan") hereby submits its comments in support of the Petition for Declaratory Ruling (the "Petition") filed by Hogan & Hartson in the above-referenced proceeding. Burr, Egan also supports the Comments being submitted concurrently herewith by Ameritrust Company National Association, Chemical Bank and New Bank of New England, N.A. (the "Bank Comments") and agrees with the legal analysis contained therein. In addition, Burr, Egan adds the following:

1. Introduction and Background

Burr, Egan is a venture capital and investment firm which specializes in broadcasting and other communications industries. For over 12 years, Burr, Egan has served as an investor in, and lender to, numerous owners of broadcast properties.

Burr, Egan serves a function different from that of a senior lender, such as a commercial bank. Typically, Burr, Egan does not extend "senior loans" to broadcasters. Rather, the funds invested by Burr, Egan in broadcast companies are ordinarily advanced in exchange for subordinated notes and for warrants or other types of non-controlling and/or non-

attributable equity interests. The subordinated notes held by Burr, Egan often (although not always) are secured by a "junior" or "subordinated" security interest in the broadcaster's assets. This security interest is akin to the security interest taken by a senior lender, but is subordinate thereto (i.e., it cannot be realized upon until the indebtedness of the senior creditor is fully satisfied).

Banks and other senior lenders normally provide only a portion of the funds necessary to acquire and operate a broadcast station. Thus, the availability of funds from investment and venture capital firms, such as Burr Egan, is often critical in enabling minorities, entrepreneurs and others without ready sources of capital to become broadcast station owners. As a result of the participation of such financing sources, a greater diversity of broadcast "voices" has been achieved.

In addition to providing funds to broadcasters, Burr, Egan often assists them in identifying other sources of financing, including senior loans from banks and other lenders. Burr, Egan's concerns about the issues involved in this proceeding stem not only from its perspective as a subordinated creditor, but also from the perspective of a firm deeply involved in assembling capital at all levels of a broadcasting company's capitalization structure. Burr, Egan's overriding concern is that, absent appropriate action by the Commission in this proceeding, such capital will become increasingly unavailable, with serious consequences to the broadcasting industry.

2. The Commission Should Recognize A Limited Security Interest in Broadcast Licenses

The broadcasting industry has been built, financed and valued over the years on the assumption that lenders' security interests in a station's assets extend to the fair market value of the station, not just to the value of its fixed and current assets. Burr, Egan's expectations regarding the scope of such a security interest have been equivalent to those of most lenders and investors--i.e., that, whether or not such security interest extends to a broadcaster's FCC license itself, the security interest is sufficient to encompass the full "going-concern value" of the station, including all proceeds that would be realized by the licensee upon a station sale.

The decisions in Stephens Industries, Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986), In re Oklahoma City Broadcasting Corp., 112 Bankr. 425 (Bankr. W.D. Okla. 1990) and In re Smith, 94 Bankr, 220 (Bankr. M.D. Ga. 1980), have upset these expectations. The Petition and the Bank Comments adequately describe these cases and their effect on senior lenders. However, these decisions could have a devastating effect on all segments of the broadcasting industry.

Due to such factors as the current recession and the imposition of new banking regulations, the broadcast industry is already suffering through a serious credit crunch. Very little senior debt is currently available to broadcasters. The inability of senior lenders to obtain an adequate "collateral package" places broadcasters at a marked disadvantage vis-a-vis other types of borrowers seeking loans and dramatically reduces

the ability of broadcast licensees to attract needed capital. The inability of broadcasters to raise adequate capital has the collateral impact of reducing the market value of broadcast properties and may force sales or liquidations of otherwise well-run stations. Indeed, the unavailability of capital may in some cases force stations off the air altogether.

A contraction of available capital will also reduce the opportunities for broadcast ownership. The broadcast industry has historically functioned in a marketplace where successful operators with successful business plans could purchase broadcast stations in part by pledging their stations as collateral (as is the typical practice in most industries). As sources of capital decrease and lender concerns about collateral rise, financing may no longer be available to smaller operators no matter how strong their expertise or business plans.

Further, the unavailability of capital will adversely affect the quality of broadcast stations. Without outside capital, most broadcasters will be unable to invest in the people, promotions or equipment necessary to maintain and improve the quality of their radio stations.

Thus, the entire broadcasting industry--including broadcast stations, their audiences and communities and their advertisers--will suffer if the results of Stephens Industries, Inc. v. McClung, In re Oklahoma City and In re Smith, *supra*, are allowed to become more widespread. Moreover, the results in such cases are tremendously unfair to the lenders, investors and other companies who have financed and helped to build the broadcast

industry. To avoid worsening an already difficult situation, Burr, Egan urges the Commission to recognize the ability of creditors to take a limited security interest in a broadcast license, as suggested in the Petition and the Bank Comments. Such action is necessary to maintain quality and growth in the broadcast industry and to ensure the diversity of voices and the community service that the Commission has long fostered.

3. Conclusion

For the foregoing reasons, Burr, Egan respectfully requests that the Commission grant the Petitioner's request for a declaratory ruling that creditors may take a limited security interest in a broadcast license.

Respectfully submitted,

BURR, EGAN, DELEAGE & CO.

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CERTIFICATE OF SERVICE

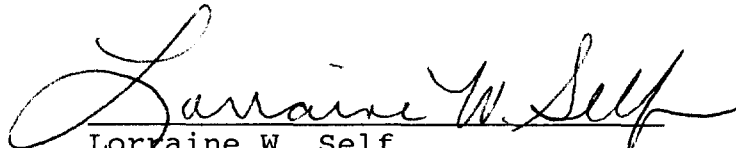
I, Lorraine W. Self, Senior Legal Assistant with the law firm of Latham & Watkins, do hereby certify that I have on this 22nd day of April, 1991, caused copies of the foregoing Comments of Burr, Egan, Deleage & Co. to be served by first class U.S. mail, postage prepaid, upon the following:

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